Public Laws: 103rd Congress / 1st Session / Senate Bills / 1993 / File 1

103D CONGRESS
1ST SESSION

S. 25

To protect the reproductive rights of women, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. MITCHELL (for himself, Mr. AKAKA, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mr. BOREN, Mrs. BOXER, Mr. BRADLEY, Mr. BRYAN, Mr. CAMPBELL, Mr. CHAFEE, Mr. COHEN, Mr. DODD, Mr. FEINGOLD, Ms. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. INOUYE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KERREY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Ms. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. ROBB, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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A BILL

To protect the reproductive rights of women, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Freedom of Choice Act of 1993".

SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The 1973 Supreme Court decision in Roe v. Wade established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy. Under the strict scrutiny standard enunciated in Roe v. Wade, States were required to demonstrate that laws restricting the right of a woman to choose to terminate a pregnancy were the least restrictive means available to achieve a compelling State interest. Since 1989, the Supreme Court has no longer applied the strict scrutiny standard in reviewing challenges to the constitutionality of State laws restricting such rights.

(2) As a result of the Supreme Court's recent modification of the strict scrutiny standard enunciated in Roe v. Wade, certain States have restricted the right of women to choose to terminate a pregnancy or to utilize some forms of contraception, and these restrictions operate cumulatively to—

(A)(i) increase the number of illegal or medically less safe abortions, often resulting in physical impairment, loss of reproductive capacity or death to the women involved;

(ii) burden interstate commerce by forcing women to travel from States in which legal barriers render contraception or abortion unavailable or unsafe to other States or foreign nations;

(iii) interfere with freedom of travel between and among the various States;

(iv) burden the medical and economic resources of States that continue to provide women with access to safe and legal abortion; and

(v) interfere with the ability of medical professionals to provide health services;

(B) obstruct access to and use of contraceptive and other medical techniques that are part of interstate and international commerce;

(C) discriminate between women who are able to afford interstate and international travel and women who are not, a disproportionate number of whom belong to racial or ethnic minorities; and

(D) infringe upon women's ability to exercise full enjoyment of rights secured to them by Federal and State law, both statutory and constitutional.

(3) Although Congress may not by legislation create constitutional rights, it may, where authorized by its enumerated powers and not prohibited by a constitutional provision, enact legislation to create and secure statutory rights in areas of legitimate national concern.

(4) Congress has the affirmative power both under section 8 of article I of the Constitution of the United States and under section 5 of the Fourteenth Amendment of the Constitution to enact legislation to prohibit State interference with interstate commerce, liberty or equal protection of the laws.

(b) PURPOSE.—It is the purpose of this Act to establish, as a statutory matter, limitations upon the power of States to restrict the freedom of a woman to terminate a pregnancy in order to achieve the same limitations as provided, as a constitutional matter, under the strict scrutiny standard of review enunciated in Roe v. Wade and applied in subsequent cases from 1973 to 1988.

SEC. 3. FREEDOM TO CHOOSE.

(a) IN GENERAL.—A State—

(1) may not restrict the freedom of a woman to choose whether or not to terminate a pregnancy before fetal viability;

(2) may restrict the freedom of a woman to choose whether or not to terminate a pregnancy after fetal viability unless such a termination is necessary to preserve the life or health of the woman; and

(3) may impose requirements on the performance of abortion procedures if such requirements are medically necessary to protect the health of women undergoing such procedures.

(b) RULES OF CONSTRUCTION.—Nothing in this Act shall be construed to—

(1) prevent a State from protecting unwilling individuals or private health care institutions from having to participate in the performance of abortions to which they are conscientiously opposed;

(2) prevent a State from declining to pay for the performance of abortions; or

(3) prevent a State from requiring a minor to involve a parent, guardian, or other responsible adult before terminating a pregnancy.

SEC. 4. DEFINITION OF STATE.

As used in this Act, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and each other territory or possession of the United States.

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